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SIPDIS

DEPARTMENT FOR SCA/CEN (M. O'MARA)

SENSITIVE

SIPDIS

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SUBJECT: KAZAKHSTAN: PRESIDENT NAZARBAYEV FAST-TRACKS CONSTITUTIONAL

REFORMS

REF: A. Astana 515, B. Astana 1304

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¶11. (SBU) Summary: President Nazarbayev presented a package of proposed constitutional amendments to a joint session of parliament on May 16, and instructed parliament to pass them this week. The proposed constitutional amendments retain significant power in the presidency, but increase the size and the power of parliament in some spheres. In addition, the constitutional amendments increase the role of maslikhats (local legislatures), eliminate the death penalty except in cases of terrorism and war crimes, pave the way for government financing of public organizations and political parties, and make it more difficult for parliament to amend the Constitution in the future. President Nazarbayev discussed a number of additional reforms, including moving to a party-list proportional representation system for all Mazhilis districts and requiring court-issued warrants for arrest. However, these reforms did not appear in the text distributed at the joint session of parliament, and will presumably be enacted as part of future legislative changes. Parliament conducted the first reading of the constitutional amendments on May 16, and is expected to complete the second reading and approve the amendments on Friday, May 18. End summary.

Nazarbayev Presents Constitutional Reforms

¶12. (U) On May 16, President Nazarbayev presented a package of proposed constitutional amendments to a joint session of parliament.

During his presentation, Nazarbayev traced the history of democratic reform in Kazakhstan, and stressed that Kazakhstan was now ready to enact "liberal reforms" and establish new counterweights in the balance of power between different branches and institutions.

¶13. (U) Nazarbayev then unveiled amendments that would accomplish the following:

-- increase the size of the Mazhilis (lower house of parliament) by 30 members, from 77 to 107, with 98 members elected by the voters and nine elected by the Assembly of Peoples of Kazakhstan, a presidentially appointed advisory body designed to represent all of the different ethnic groups in Kazakhstan.

-- increase the size of the Senate by eight members, from 39 to 47, with all eight new members appointed directly by the president.
(Note: The president currently has the power to appoint seven of the

39 senators, and will now have the power to appoint 15 out of 47 senators. End note.)

-- require the president to obtain Mazhilis approval to appoint the prime minister.

-- require the prime minister to represent the political party with a majority of seats in the Mazhilis, require the Cabinet to implement the party's program, and require the Cabinet to report to the parliament as well as the president.

-- require the parliament to approve the national budget and any amendments to the national budget.

-- reduce the number of Mazhilis members needed to dismiss the Cabinet through a no-confidence vote, from a two-thirds majority to a simple majority. Under the amendments, the vote must be initiated by at least 1/5 of the Mazhilis. The Mazhilis would also have the authority to request the dismissal of individual Cabinet members by a simple majority vote.

-- reduce the president's term in office from seven years to five years, after President Nazarbayev's current term expires in 2012.

-- tighten the residency requirement for presidential candidates, requiring candidates to have lived in Kazakhstan "for the last 15 years" as opposed to the current "for at least 15 years."

-- tighten the residency requirement for parliamentary candidates, requiring candidates to have lived in Kazakhstan "for at least 10 years." Currently, Senate candidates must have lived in Kazakhstan for at least five years; there is no residency requirement for Mazhilis candidates.

-- extend the term in office of Maslikhat members from four years to five years. (Note: Maslikhats are locally elected legislative bodies at the oblast [regional] level and the local [city/county] level. End note.)

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-- require Maslikhat consent for the appointment of regional and local akims (governors/mayors). Currently, the president appoints regional akims, and regional akims appoint local akims, without formal consent by the respective Maslikhats.

-- reduce the number of Maslikhat members needed for a no-confidence vote in their akim, from two-thirds to a simple majority. (Note: A no-confidence vote by the Maslikhat does not result in dismissal of the akim; rather, it is treated as request for dismissal by the president in the case of regional akims, or by the regional akim in the case of local akims. End note.)

-- abolish the Judicial Qualifications College, a semi-autonomous, independent body that screens and then forwards judicial candidates to the president for his consideration, and transfer the power to select candidates to the Supreme Judicial Council, a body consisting of the chairman of the Constitutional Council, the chairman of the Supreme Court, the procurator general, the minister of justice, and miscellaneous other officials.

-- abolish the death penalty for all crimes except terrorism crimes leading to death and grave crimes committed during wartime.

-- eliminate the current restriction on merging public organizations with government institutions, which will allow greater government funding of NGOs.

-- eliminate the current restriction on public financing of political parties.

-- eliminate the constitutional provision that requires the president to suspend his political party activities while serving as president.

-- allow the president to appoint the chairman and two members of

the Central Election Commission. Currently, all seven members are appointed by the Mazhilis.

-- allow the full Senate and the full Mazhilis to appoint members of the Constitutional Council, a seven-member body which interprets the Constitution. Currently, the speaker of the Senate and the speaker of the Mazhilis are each entitled to appoint two members of the Council; the proposed amendment would grant that power to the entire legislative body, as opposed to just the speakers. The president would retain the power to appoint the chairman and two remaining members.

-- allow the full Senate and the full Mazhilis to appoint members of the Budget Revision Commission, a nine-member body with authority over budget issues. Currently, the speaker of the Senate and the speaker of the Mazhilis are each entitled to appoint three members of the Commission; the proposed amendment would grant that power to the entire legislative body, as opposed to just the speakers. The president would retain the power to appoint the chairman and two remaining members.

-- increase the number of referendum votes needed to amend the Constitution by referendum, from a simple majority of votes in the country to a majority of votes in two thirds of all oblasts and major cities (Almaty and Astana). (Note: The proposed amendments do not address the mechanism for amending the Constitution through the legislature. End note.)

Future Legislative Changes?

¶13. (U) In his presentation, President Nazarbayev made a number of additional proposals which did not appear in the text distributed to audience members. These changes do not involve amending the Constitution, and will presumably be enacted following the adoption of the new constitutional amendments. Among other things, he proposed strengthening the role of political parties in the parliamentary election process by moving to a party-list system for all Mazhilis seats, and creating a mechanism to provide public financing for political parties. In addition, he stated that the power to authorize arrests would be vested in the judiciary. A summary of Nazarbayev's speech was immediately posted on the presidential website (www.akorda.kz) in Russian, Kazakh, and English.

Timeline

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¶14. (SBU) President Nazarbayev asked the parliament to approve the constitutional amendments this week, citing the public discussion that had already taken place on these reforms through the Democratization Commission (Ref A). The parliament conducted the required first reading on May 16, and is scheduled to complete the second reading and hold a final vote on Friday, May 18. Although the president said nothing about early parliamentary elections, informed observers such as Alikhan Baymenov of Ak Zhol (Ref B) and Oraz Zhandosov of True Ak Zhol believe that this is inevitable.

Reactions

¶15. (SBU) Initial reactions from our contacts have been mixed. Not surprisingly, opposition Social Democratic Party leader Zharmakhan Tuyakbay, who has chosen a path of constructive engagement with the Kazakhstani government, told the press that overall he was pleased with this "first step toward democratic reform," even though it was a "cautious" move and more public debate was needed. He called for further reforms, including "real" authority for the Mazhilis to form the government and control the national budget; direct election of akims at all levels; and the election of judges to ensure the independence of the judiciary. Oraz Zhandosov of True Ak Zhol,

usually a vocal critic of the government, told the Ambassador that he viewed the majority of the proposals as beneficial. Well-known human rights defenders Yevgeniy Zhovtis and Ninel Fokina both expressed concern to us regarding the lack of transparency and public debate. Interestingly, both also viewed the move to a party list system as disadvantageous for opposition parties, even though the sole (nominal) opposition representative in parliament today - Baymenov - was elected from the party list.

Comment

¶6. (SBU) Although detailed analysis will be necessary to judge whether these changes will increase the ability of Kazakhstani citizens to influence their government, these draft amendments clearly have the potential to lead to greater democratization. Switching to a pure proportional system to elect the Mazhilis, for example, is likely to significantly strengthen the development and role of political parties. Increasing Parliament's authority will introduce greater institutional balance and oversight, even if there is a large pro-presidential parliamentary majority.

¶7. (SBU) In the short run, political parties favoring President Nazarbayev and his policies will dominate any freely-elected Parliament. Nonetheless, if there is sufficient political will at the top to ensure a fair electoral process, even a small increase in opposition representation would provide for greater public debate and dialogue. In addition, we have been telling the GOK for some time that it needs to develop strong, democratic institutions for the post-Nazarbayev era. In this context, real steps to reduce the formal powers of the presidency and increase the role of parliament would be a major step in the right direction.

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